Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	
on Universal Service	)	CC Docket No. 96-45
	)	
Recommendations for Phasing Down	)	DA 00-1536
Interim Hold-Harmless Provision	)	

COMMENTS OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association (NTCA),[1] submits its comments in response to the Federal Communications Commission's (Commission's or FCC's) *(Public Notice)* in the above-captioned matter.[2] NTCA urges the Commission to take this opportunity to repeal section 54.305 of its rules.[3] This rule has discouraged rural carries from acquiring and upgrading many rural exchanges owned by non-rural carriers because the per line support that would be received for these acquired exchanges is inadequate. Repealing 47 CFR 54.305 and replacing it with a rule that

[1] NTCA is a national association of more than 500 local exchange carriers (LECs). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America.

[2] *See* Public Notice, Federal-State Joint Board On Universal Service Recommendations For Phasing Down Interim Hold-Harmless Provision, CC Docket No. 96-45, *Pleading Cycle Established*, DA 00-1536 (rel. July 11, 2000) (*Public Notice*).

[3] NTCA also recommends that the Commission should remove the individual caps on the high-cost universal support for all carriers, lift the interim cap on the high-cost universal service fund, and maintain Lomg Term Support (LTS) under the Commission's current rules until the FCC considers appropriate reforms for the LTS program in connection with pending proceedings for high cost reform for rural carriers.

allows acquiring rural carriers to recalculate their per line support based on the average cost of all their lines will allow rural carriers the ability to upgrade acquired exchanges to provide better service and more rapid deployment of broadband services in rural America.

I INTRODUCTION

On June 30, 2000, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision for phasing down the interim hold-harmless provision of the new, forward-looking high-cost universal service support mechanism for non-rural carriers.[4] The Joint Board recommended that Long Term Support (LTS) be maintained under the Commission's current rules until the FCC considers appropriate reforms for the LTS program in connection with pending proceedings for high cost reform for rural carriers and/or interstate access reform for rate of return carriers. The Joint Board also recommended that the FCC phase down the balance of the interim hold-harmless support, excluding LTS, through $1.00 reductions in average monthly, per line support beginning January 1, 2001, and every year thereafter. Lastly, the Joint Board recommended against phasing down any interim hold-harmless support that is transferred to a rural carrier when it acquires exchanges from a non-rural carrier. Instead, the Joint Board recommended that such transferred hold-harmless support should be maintained until the Commission completes a review of the rule governing

[4] *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 00J-1 (Released June 30, 2000).

the transfer of universal service support or until rural high-cost reform is complete.

On July 11, 2000 the Commission released this *Public Notice* seeking comment on the Joint Board's recommendations. NTCA hereby submits its comments in response to the Joint Board's recommendations.

II THE FCC SHOULD REPEAL RULE 47 CFR 54.305 WHICH GOVERNS THE TRANSFER OF UNIVERSAL SUPPORT TO A RURAL CARRIER WHEN IT ACQUIRES EXCHANGES FROM A NON-RURAL CARRIER

In its recommendation, the Joint Board recommended that interim hold-harmless support for rural carriers should not be phased down for an acquiring rural carrier following the transfer of exchanges from a non-rural carrier until the Commission reexamines the operation of 47 CFR 54.305 and/or reforms the high-cost mechanism for rural carriers. The Joint Board expressed specific concern about the operation of 47 CFR 54.305 which discourages carriers from placing an unreasonable reliance upon potential universal service support in deciding whether to purchase exchanges from other carriers. It stated that in practice the rule has negative consequences because it freezes support based on the seller's embedded costs, and therefore prevents the acquiring carrier from receiving an amount of support related to the costs of providing supported services in the transferred exchanges. The Joint Board strongly encouraged the Commission to consider an alternative to section 54.305 at the earliest opportunity.

NTCA supports the Joint Board's recommendation that interim hold-harmless support for rural carriers should not be phased down following the transfer of exchanges from a non-rural carrier. NTCA also urges the Commission to take this opportunity to repeal 47 CFR 54.305 and implement an alternative rule which would allow acquiring rural carriers to receive universal service support based on the average costs of all lines, including the lines in the transferred exchanges.

Rule 47 CFR 54.305 was intended to be a stopgap measure until carriers eventually received support based on forward-looking economic costs.[5] Instead, it has become a disincentive for rural carries considering the acquisition of exchanges served by non-rural carriers because the per line support that would be received for many of these exchanges is inadequate. Repealing 47 CFR 54.305 and replacing it with a rule that permits acquiring rural carriers to recalculate their per line support based on the average cost of all their lines would allow rural carriers to complete the necessary upgrades and repairs in order to provide high quality service and broadband capability in the newly acquired exchanges. Eliminating and replacing the rule will also assist the Commission in meeting its universal service and advance services mandates by providing sufficient and predictable support to rural carriers acquiring exchanges and allow these carries to accelerate the deployment of broadband services to rural America.

III IN ADDITION TO REPEALING 47 CFR 54.305, THE COMMISSION SHOULD REMOVE THE INDIVIDUAL CAPS ON HIGH COST LOOP SUPPORT

[5] *See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order,* 12 FCC Rcd at 8942-43 (when all carriers receive support based on forward looking economic costs, the level of support will not be a primary factor in a carrier's decision to purchase exchanges because the carrier's support will not be based on the size of the study area nor embedded costs)(*First Report and Order).*

IMPOSED AS PART OF THE GRANT FOR STUDY AREA WAIVERS [6]

[6] Study area waivers are granted subject to the condition that, absent explicit approval from the FCC, the high-cost loop support provided to an acquiring carrier's study area could not exceed the amounts specified in the carrier's waiver petition. This rule was implemented in order to prevent carriers from: (1) underestimating the effects the waiver may have on the high-cost loop support mechanism in order to increase the chances that the waiver would be granted; and then (2) revising the cost figures upward, once the waiver was granted, thereby substantially increasing their share of the high-cost loop support from the capped universal service fund.

On September 9, 1999, the Commission granted the petitions of the nine rural telephone companies which involved issues related to study area waiver requests.[7] Specifically, the FCC removed the individual caps placed on the amount of high-cost loop support that these companies would be eligible to draw from their new study areas after acquiring exchanges from other carriers.[8] The Commission determined that the high-cost universal service loop support for these carriers will be based on the average

[7] The FCC has recently lifted the individual caps imposed on effected companies that sought individual relief. *See* Petitions for Waiver and Reconsideration Concerning Sections 36.611, 36.612, 61.419(c)(2), 69.605(c), 69.3(e)(11) and the Definition of "Study Area" Contained in part 36 Appendix-Glossary of the FCC's Rules, AAD 93-93, AAD 95-72, AAD 95–30, AAD-97-21, AAD-97-23, AAD 97-117, AAD 98-44, and AAD 98-53, Memorandum and Opinion on Reconsideration, DA 99-1845 (rel. Sept. 9, 1999) (*Individual Cap Relief Order*).

[8] Effective November 15, 1984, the Commission froze all study area boundaries. The study area freeze was to help the FCC ensure that incumbent LECs did not set up high cost exchanges within their existing service territories as separate study areas in order to increase interstate cost allocations and federal high cost support. Study area waivers require that the requesting carrier estimate the amount of money that it would be eligible to receive from the high cost universal service fund (USF) following an acquisition of an exchange or exchanges and necessary and planned upgrades to the new study area. The estimate is used to establish a cap which limits the carrier's draw from the high cost support mechanism. In addition, the FCC's one percent rule requires that no study area waiver will be granted if it would result in an annual aggregate shift in USF assistance in an amount equal to or greater than one percent of the total USF. The individual caps and the one percent rule allowed the FCC to control the impact on the distribution and growth of the high cost fund .

cost of their lines.[9] In removing the caps, the Commission stated that it believes that the carriers' increase in high-cost support may also increase their incentive and ability to extend service to previously unserved areas.[10]

In October and November 1999, as a result of the *Individual Cap Relief Order,* 40 additional rural telephone companies filed 27 separate petitions requesting the FCC to remove the individual caps on the high-cost universal support in their study areas. Many of the petitions proposed, that in order to avoid the administrative burden of repeatedly applying the new FCC policy to many similar requests, that the Commission should clarify its policy by removing individual high-cost caps, that have been in effect for three or more years, to all similarly-situated companies.

On August 4, 2000, the Commission release its order concerning the additional 40 rural telephone companies. In the order, the FCC removed the caps effective January 1, 2001 for the 40 companies that petitioned for study area waivers. The Commission stated that:

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9 *Individual Cap Relief Order*, ¶ 10.

10 *Individual Cap Relief Order*, ¶¶ 6-7.

> We concur with the petitioners that their cost estimates for upgrading the acquired exchanges, although reasonable at the time, may no longer reflect the costs that they are now incurring. We, therefore, conclude that limiting the duration of these caps is appropriate at this time.[11]

For the same reasons the Commission has removed the individual caps and granted the study area waiver requests, the FCC should remove the individual caps for all rural carriers. The individual caps have limited the size of the universal service fund and have hindered the ability of many carriers to upgrade service to existing customers and extend service to new customers in unserved areas. The removal of the individual caps will allow carriers to improve and expand service to new and existing customers. In doing so, the Commission will make greater strides towards accomplishing its mandate of providing access to telecommunications services to consumers in all regions of the Nation including low-come consumers and consumers who live in rural, insular and high-cost areas.[12]

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11 *Study Area Waiver Order,* DA 00-1761, (Released August 4, 2000).

12 47 U.S.C. § 254.

IV THE COMMISSION SHOULD ALSO LIFT THE INTERIM CAP ON THE HIGH-COST UNIVERSAL SERVICE FUND

In addition repealing 47 CFR 54.305 and removing the individual high-cost caps, the Commission should also lift the interim cap on the high-cost universal support fund. The cap is a significant disincentive to investment in underserved areas because it limits the universal service support to all carriers whenever the cap is triggered.[13] Thus, even the areas that are in most need of upgrades must make do with less in any given year that the cap is operational. Lifting the cap on the size of the fund is consistent with the Commission's new individual cap relief policy and will provide carriers with an even greater incentive to invest in underserved exchanges and unserved areas of the country. The more investment in underserved exchanges and extensions into unserved areas the greater the likelihood of access to universal and advanced telecommunications services to low-come consumers and consumers in rural, insular and high-cost areas of the Nation.

V NTCA SUPPORTS THE JOINT BOARD'S RECOMMENDATION TO MAINTAIN LTS UNDER THE CURRENT FCC RULES

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[13] The existing high cost loop support fund has an interim cap on the total amount of the fund until all carriers receive support based on the new high cost funding mechanism. The FCC's current rules require that if total support, based on each carrier's actual costs, is above the total allowed cap amount, each recipient of high cost loop support will receive a reduced amount of support to keep the total fund at a capped amount.

The Joint Board recommended that Long Term Support be maintained under the Commission's current rules until the Commission considers appropriate reforms for the LTS program in connection with pending proceedings for high cost reform for rural carriers and/or interstate access reform for rate of return carriers. The Joint Board expressed its concern that if LTS were phased out for the three eligible non-rural carriers without a corresponding reduction in costs, the CCL rate for all NECA pool participants would increase significantly.[14] The NTCA shares this concern and recommends that the Commission avoid this potential hazzard by removing LTS from the hold harmless phase-down mechanism until the FCC considers appropriate reforms for the LTS program in connection with pending proceedings for high cost reform for rural carriers.

VI CONCLUSION

Based on these reasons, NTCA urges the Commission to repeal 47 CFR 54.305, remove the individual caps on the high-cost universal support for all carriers, lift the interim cap on the high-cost universal service fund, and maintain LTS under the Commission's current rules until the FCC considers appropriate reforms for the LTS program in connection with pending proceedings for high cost reform for rural carriers.

Respectfully submitted,

National Telephone Cooperative Assn.

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[14] *See Recommended Decision* at ¶ 9, citing NECA Comments (" … loss of LTS for non-rural carriers could cause the NECA CCL rate to rise by up to 42 percent.").

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August 14, 2000

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, DA 00-1536 was served on this 14th day of August 2000 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

/s/ Gail C. Malloy
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